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DEC 17 2018

**WASHINGTON STATE
SUPREME COURT**

96652-4

PETITION FOR DISCRETIONARY REVIEW TO

WASHINGTON SUPREME COURT

FROM

COURT OF APPEALS

DIVISION I

FOR THE THE STATE OF WASHINGTON

77353-4-I

**FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2018 DEC 17 PM 3:52**

**VALENTINA POLETAYEVA,
Appellant,**

DIVISION ONE

v.

**SPECIALIZED LOAN SERVICES, LLC
MOTION TO RECONSIDER
Defendant/Counterclaim Plaintiff,**

**KAREN GIBBONS,
Trustee**

**Submitted by: Valentina Poletayeva
Pro Se
819 Virginia Street, #1404
Seattle, WA 98101
(206) 290-5712
seahomes@msn.com**

Table of Contents:

I. Citation to Appellate Decision To Be Reviewed.....3

II. Statement of the Case.....3

III. Issues Presented for Review.....6

IV. Arguments.....6

V. Important Legal Issues Are Presented by This Appeal
and Should Be Reviewed By The Supreme Court.....8

Table of Authorities:

State v. Johnson, 96 Wash. 2d 926, 639 P.2d 1332 (1982).....6

Kruse v. Hemp, 121 Wn.2d 715, 853 P.2d 1373 (1993).....7

I. CITATION TO APPELLATE DECISION TO BE REVIEWED

Petitioner requests the Washington Supreme Court review and reverse the Washington State Court of Appeals decision in Valentina Poletayeva, Appellant v. Specialized Loan Services, LLC, Defendant/Counterclaim Plaintiff, 77353-4-I Unpublished Opinion (November 19, 2018), herein the "Opinion". A copy of said Opinion is included in the Appendix.

II. STATEMENT OF FACTS

On November 19, 2018, the Court of Appeals, Division I, entered Unpublished Opinion in my case, upholding trial court's Order granting Motion for Summary Judgment on behalf of Specialized Loan Services, LLC. The Petitioner respectfully ask the Court to review the Appellate Court's decision, as, even though it is based on existing law, it brings unjustifiably unfair result.

Please, consider the following facts:

1. On April 19, 2007, the Petitioner Valentina Poletayeva signed Promissory Note on behalf of Countrywide Home Loan LLC, evidencing the loan to the Petitioner in the original loan amount of \$550,000.

2. The Note was endorsed in blank, and was subsequently sold to the Bank of America, then to Bank of New York Mellon, and, finally, to New Penn Financial LLC.
3. The original interest rate on the Note was 12.5%. The Petitioner's initial plan was to refinance the property in twelve months under a bearable interest rate, but she was not able to do so due to the market crash of 2008.
4. In 2010, the Petitioner applied for loan modification. On April 23, 2011, the Petitioner and Countrywide entered into a "Step Rate" Loan Modification agreement (hereinafter "Loan Modification Agreement") that provided for a reduced interest rate of 3.625% with a step up increase thereafter and interest-only payment of \$1,784.43 for a defined period.
5. The Petitioner has made three payments of \$1,784.43 under the terms of the Loan Modification Agreement to Countrywide;
6. After receiving the third payment, Countrywide sent the Petitioner permanent loan documents for her signature. The Petitioner signed the documents and returned them to Countrywide. She sent them by FedEx and has a proof that the documents were received by Countrywide;

7. In September 2001, Countrywide informed the Petitioner that there was no loan modification in place and refused to accept any future payments;
8. At the time Countrywide informed the Petitioner that there was no loan modification, the Petitioner was current on her loan because Countrywide accepted her three previous payments and never returned the money to her;
9. Since then, the Petitioner attempted numerous loan modifications with Countrywide and its successors, but to no avail;
10. The Petitioner has been told conflicting numbers what her loan balance was and what interest rate the Countrywide and its successors used. The last letter informed the Petitioner that her current mortgage rate is around 6.5%, but it is unclear what documents the Respondent is relying on.
11. Due to the absence of loan documents stating what her interest rate is and the amount of her loan balance, the Petitioner was unable to sell her property. The bank refuses to accept payments from the Petitioner since September 2009, refuses to enter into loan modification

agreement, refuses to cooperate with the Petitioner with regards to the sale or short sale of her property.

12. The facts regarding the Petitioner's loan history with Countrywide have never been refuted by Respondent New Penn or its predecessor, the Defendant Specialized Loan Services, LLC.
13. The acts of the Countrywide and its successors forced the Petitioner to file lawsuit in the King County Superior Court, Case #15-2-24816-2 SEA in attempt to clear the confusion regarding the loan interest rate and the loan balance.
14. The Defendant Specialized Loan Services, LLC, counterclaimed with judicial foreclosure proceeding, and the Court granted the Defendant's Motion for Summary Judgment, and ordered judicial foreclosure sale without the right to redeem the property.
15. The Appellate Court upheld the decision of the trial court.

III. ISSUES PRESENTED FOR REVIEW

Petition Involves an Issue of Substantial Public Interest that Should Be Determined by the Supreme Court.

IV. ARGUMENTS

The Supreme Court has granted a petition for review when, although affirming decisions below, it disagreed with the

reasoning below. *State v. Johnson*, 96 Wash. 2d 926, 639 P.2d 1332 (1982) (overruled on other grounds by, *State v. Calle*, 125 Wash. 2d 769, 888 P.2d 155 (1995)). Though review by Supreme Court is normally limited to issues raised in petition for review and answer, the Court has authority to perform all acts necessary or appropriate to fair and orderly review to serve the ends of justice. Thus, court could address substantive issue not raised by parties in order to curtail further appeals. *Kruse v. Hemp*, 121 Wash.2d 715, 853 P.2d 1373 (1993)(holding modified on other grounds by *Berg v. Ting*, 125 Wash.2d 544, 886 P.2d 564 (1994))

Both the trial court's decision and Appellate Court's Unpublished Opinion misinterpreted the severity of what happened - they did not sufficiently understand the loan history for this property and the underlying fault of the bank. Both opinions place emphasis on the two events: that the Petitioner signed the promissory note and defaulted on it, which, under the terms on the note, give the current note holder the right to foreclose. However, at the time Countrywide refused to accept the Petitioner's payments, there was no default.

On April 23, 2011 Countrywide Bank granted modification of loan and accepted first 3 payments at 3.75% which the Petitioner could pay and did pay willingly. In September 2011, Countrywide

Bank changed its position and did not accept the Petitioner's payments, informing the Petitioner they had no such loan documents and that a further modification would be required - knowing full well that at this time, due to the shift in the economic climate, they would not grant the Petitioner the previously agreed upon modification rate that she could and was already paying. When the Petitioner informed Countrywide of these facts, they did not deny the history of her loan.

This is sufficient reason to find this is a wrongful foreclosure brought about by the manipulation of the loan by Countrywide Bank. The Petitioner was forced into default, and now subsequently into foreclosure, by the bank's manipulation of interest rate, contradictory to the modification program that they allowed the Petitioner to apply with for a lowered interest rate, putting the Petitioner in default by denying the previously agreed upon rate.

The Court's decision, in effect, allows creditors to reject payments without cause, in order to create a default, and to sell the loan to another bank to cover its misdeed. The Court, in its opinion, refers to acts of Countrywide as "acts of non party," implying that no matter what transgressions previous lender did, it has no bearing on the case.

There is an existing disparity of power between the lender and the borrower. The loan documents are created by lenders and borrowers do not have bargaining power to change anything in the documents. The alternative to these documents is to buy the property by cash, since all loan documents are virtually the same, regardless of who the lender is. The Court's Unpublished Opinion makes this disparity of power even worse, refusing to acknowledge the fact of Countrywide's arbitrary rejection of the Petitioner's payments. For these reasons, I respectfully ask this Court to review the Appellate Court's decision.

A handwritten signature in black ink that reads "Val. Poletayeva". The signature is written in a cursive style and is underlined with a solid black horizontal line.

Valentina Poletayeva,
Pro Se Petitioner

Superior Court of Washington, County of King

In re:

Petitioner/s (person/s who started this case):

Valentina Poletayeva

No. 77353-4-1

Proof of Personal Service
(AFSR)

And Respondent/s (other party/parties):

Specialized Loan Services
LLC

Proof of Personal Service

Server declares:

1. My name is: Sasha Rybin. I am not a party to this case.
I am 18 or older.

2. Personal Service

I served court documents for this case to (name of party): Lisa Hackney
by (check one):

- giving the documents directly to him/her.
- giving the documents to (name): _____
a person of suitable age and discretion who lives at the same address as the party.

3. Date, time, and address of service

Date: 12/17/2018 Time: 3:17 a.m. p.m.

Address: 2100 Broadnax + Steele
6100 219th St SW Mantlake Terrace WA 98043
Number and street city state zip

4. List all documents you served (check all that apply):

(The most common documents are listed below. Check only those documents that were served. Use the "Other" boxes to write in the title of each document you served that is not already listed)

<input type="checkbox"/> Petition to/for _____	
<input type="checkbox"/> Summons (Attach a copy.)	<input type="checkbox"/> Notice of Hearing _____
<input type="checkbox"/> Order Setting Case Schedule	<input type="checkbox"/> Motion for Temporary Family Law Order <input type="checkbox"/> and Restraining Order
<input type="checkbox"/> Notice Re Military Dependent	<input type="checkbox"/> Proposed Temporary Family Law Order
<input type="checkbox"/> Proposed Parenting Plan	<input type="checkbox"/> Motion for Immediate Restraining Order (Ex Parte)
<input type="checkbox"/> Proposed Child Support Order	<input type="checkbox"/> Immediate Restraining Order (Ex Parte) and Hearing Notice
<input type="checkbox"/> Proposed Child Support Worksheets	<input type="checkbox"/> Restraining Order
<input type="checkbox"/> Sealed Financial Documents	<input type="checkbox"/> Motion for Contempt Hearing
<input type="checkbox"/> Financial Declaration	<input type="checkbox"/> Order to Go to Court for Contempt Hearing
<input type="checkbox"/> Declaration of: _____	<input type="checkbox"/> Notice of Intent to Move with Children (Relocation)
<input type="checkbox"/> Declaration of: _____	<input type="checkbox"/> Objection about Moving with Children and Petition about Changing a Parenting/ Custody Order (Relocation)
<input checked="" type="checkbox"/> Other: <u>Petition for discretionary review</u>	<input type="checkbox"/> Other: _____
<input checked="" type="checkbox"/> Other: <u>unpublished opinion</u>	<input type="checkbox"/> Other: _____

5. Fees charged for service

Does not apply.

Fees: \$ _____ + Mileage \$ _____ = Total: \$ _____

6. Other Information (if any): _____

I declare under penalty of perjury under the laws of the state of Washington that the statements on this form are true.

Signed at (city and state): Manlylake Terrace Date: 10/17/18

[Signature] Signature of server Wit Sofia Rybin Print or type name of server

To the party having these documents served:

- File the original *Proof of Personal Service* with the court clerk.
- If you served a *Restraining Order* signed by the court, you must also give a copy of this *Proof of Personal Service* and a *Law Enforcement Information Sheet* to law enforcement.

To the Server: check here if you personally served the documents *outside* Washington state. Your signature must be notarized or sworn before a court clerk.

(For personal service in Washington state, your signature does not need to be notarized or sworn before a court clerk.)

Signed and sworn to before me on (date): _____.

Signature of notary or court clerk

Print name of notary or court clerk

I am a notary public in and for the state of:

My commission expires: _____

I am a court clerk in a court of record in
(county): _____

(state): _____

(Print seal above)

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WASHINGTON STATE
SUPREME COURT

FILED
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STATE OF WASHINGTON

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2018 NOV 19 AM 9:05

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

VALENTINA POLETAYEVA,)	
)	No. 77353-4-1
Appellant,)	
)	DIVISION ONE
v.)	
)	
SPECIALIZED LOAN SERVICES, LLC, [†])	
)	
Defendant/ Counterclaim)	UNPUBLISHED OPINION
Plaintiff,)	
)	FILED: November 19, 2018
KAREN GIBBON, Trustee,)	
)	
Defendant.)	

SMITH, J. — Valentina Poletayeva appeals the trial court's summary judgment of foreclosure. Because Poletayeva did not raise a genuine issue of material fact regarding the existence of a default and because New Penn Financial LLC is otherwise entitled to foreclose, we affirm.

FACTS

On April 19, 2007, Poletayeva executed a promissory note in the amount of \$550,000 in favor of Countrywide Home Loans Inc. Countrywide endorsed the

[†] Specialized Loan Services LLC (SLS), the original defendant and counterclaim plaintiff in this case, was replaced by New Penn Financial LLC, d/b/a Shellpoint Mortgage Services, below. The case caption was not updated to reflect this substitution.

No. 77353-4-1/2

note in blank. The note is secured by a deed of trust encumbering a condominium located at 819 Virginia Street, Unit 1404, in Seattle.

On or about April 23, 2009, Poletayeva and Countrywide entered into a loan modification agreement that reduced the interest rate and the amount of Poletayeva's monthly payments under the note.¹ Poletayeva made three payments pursuant to the loan modification. She alleges that after these three payments, Bank of America, which had by then acquired the underlying loan, notified her that the interest rate on the loan was still the original 12.25 percent and that the payments she made based on the loan modification were insufficient. Poletayeva then engaged, unsuccessfully, in efforts to obtain another loan modification from Bank of America.

In 2011, the deed of trust was assigned to the Bank of New York Mellon (BNYM), as the trustee for the certificate holders of the "CWABS, Inc., Asset-Backed Certificates, Series 2007-8." Clerk's Papers at 79. On or about May 13, 2012, BNYM, through its servicing agent, SLS, sent notice to Poletayeva regarding default and acceleration under the note and the deed of trust based on Poletayeva's failure to make monthly payments when due. Poletayeva attempted, unsuccessfully, to obtain a loan modification from SLS.

In October 2015, Poletayeva filed suit against SLS in advance of a trustee's sale of the condo, scheduled for October 9, 2015. SLS, in its capacity

¹ The record does not contain a fully executed copy of the loan modification agreement; the copies provided in the record are only executed by Poletayeva. But, New Penn does not dispute that the loan modification agreement went into effect.

No. 77353-4-1/3

as servicing agent on behalf of BNYM, counterclaimed for judicial foreclosure.² On June 23, 2017, SLS filed a motion for summary judgment on its counterclaim, requesting that the trial court enter a judgment of foreclosure and order the sale of the condo.

Poletayeva did not file a response to SLS's motion for summary judgment. At the initial hearing on the motion, Poletayeva's counsel requested a continuance. The trial court agreed to continue the hearing to August 4, 2017, but imposed sanctions on Poletayeva's counsel. The trial court also ordered Poletayeva to file any response by July 28, 2017, and SLS to file any reply by August 2, 2017.

Poletayeva did not file a timely response. But on August 1, 2017, Poletayeva filed two declarations (her own declaration and the declaration of her counsel) in opposition to SLS's motion for summary judgment.

Meanwhile, SLS separately moved to substitute New Penn as the defendant and counterclaim plaintiff in the action, explaining that on or about December 1, 2016, BNYM had transferred the underlying loan from SLS to New Penn. Poletayeva did not file a response to the motion to substitute.

The trial court granted the motion to substitute on August 4, 2017, dismissing SLS and substituting New Penn as the defendant and counterclaim plaintiff. And on August 8, 2017, the trial court entered an order granting the motion for summary judgment and ordering the sale of the condo.

² Poletayeva did not designate a copy of her complaint or the counterclaim complaint as required by RAP 9.6(b)(1)(C). But we have a sufficient record to decide this case.

No. 77353-4-1/4

Poletayeva appeals.

ANALYSIS

Summary Judgment of Foreclosure

A. Standard of Review

We review summary judgment orders de novo, viewing all evidence and reasonable inferences in the light most favorable to the nonmoving party. Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). “[S]ummary judgment is appropriate where there is ‘no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.’” Elcon Const., Inc. v. E. Wash. Univ., 174 Wn.2d 157, 164, 273 P.3d 965 (2012) (second alteration in original) (quoting CR 56(c)). Once the moving party shows there are no genuine issues of material fact, the nonmoving party must bring forth specific facts to rebut the moving party’s contentions. Elcon Const., Inc., 174 Wn.2d at 169. “The nonmoving party may not rely on speculation, argumentative assertions, ‘or in having its affidavits considered at face value; for after the moving party submits adequate affidavits, the nonmoving party must set forth specific facts that sufficiently rebut the moving party’s contentions and disclose that a genuine issue as to a material fact exists.’” Becker v. Wash. State Univ., 165 Wn. App. 235, 245-46, 266 P.3d 893 (2011) (quoting Seven Gables Corp. v. MGM/UA Entm’t Co., 106 Wn.2d 1, 13, 721 P.2d 1 (1986)). “A material fact is one upon which the outcome of the litigation depends.” Baldwin v. Silver, 165 Wn. App. 463, 472, 269 P.3d 284 (2011) (quoting Vacova Co. v. Farrell, 62 Wn. App. 386, 395, 814 P.2d 255 (1991)).

B. New Penn's Right To Foreclose

The "holder" of a promissory note secured by a deed of trust is authorized to judicially foreclose the deed of trust following a default under the promissory note. RCW 61.24.005(2) (defining "beneficiary" of deed of trust as "the holder of the instrument or document evidencing the obligations secured by the deed of trust."); 18 WILLIAM B. STOEBUCK & JOHN W. WEAVER, WASHINGTON PRACTICE, REAL ESTATE: TRANSACTIONS § 20.19, at 437 (2d ed. 2004) ("Washington's deed of trust act gives the beneficiary an election to foreclose judicially."); see also Deutsche Bank Nat'l Trust Co. v. Slotke, 192 Wn. App. 166, 168, 367 P.3d 600 ("The holder of a promissory note secured by a deed of trust has authority to elect to commence a judicial foreclosure of that deed of trust."), review denied, 185 Wn.2d 1037 (2016). The "holder" of a note that is endorsed in blank is the person in possession of the note. RCW 62A.3-205(b) (note endorsed in blank is payable to bearer); RCW 62A.1-201(b)(21)(A) ("holder" of a note includes the person in possession of a note payable to bearer). Constructive possession is sufficient to make one the "holder" of a note. RCW 62A.3-201 cmt. 1 (a holder can possess "directly or through an agent"); Gleeson v. Lichty, 62 Wash. 656, 659, 114 P. 518 (1911) ("But, if we assume that the note was not in his actual possession, it was clearly under his control, and therefore constructively in his possession"); Barkley v. GreenPoint Mortg. Funding, Inc., 190 Wn. App. 58, 69, 358 P.3d 1204 (2015) (bank was holder of note through its agent), review denied, 184 Wn.2d 1036 (2016).

Here, it is undisputed that Poletayeva executed the note and that the deed of trust on the condo secures Poletayeva's obligations under the note. It is also undisputed that the note is endorsed in blank. Additionally, New Penn submitted an affidavit in support of the motion for summary judgment, stating that its counsel is in possession of the note on New Penn's behalf. In short, New Penn established that it is the "holder" of the note and therefore entitled to judicially foreclose the deed of trust in the event of a default under the note.³ To this end, New Penn also established via affidavit that in September 2009, a default occurred under the note when Poletayeva failed to make the regular installment payment due in September, and all subsequent payments thereafter.

Because New Penn established that there were no genuine issues of material fact regarding its entitlement to foreclose, Poletayeva was required to "set forth specific facts rebutting [New Penn's] contentions" to defeat summary judgment. Elcon Const., 174 Wn.2d at 169. As further discussed below, Poletayeva failed to do so, and therefore summary judgment was proper.

As an initial matter, Poletayeva argues that the trial court erred by failing to consider her untimely declaration filed in opposition to the motion for summary judgment. We disagree. The trial court specifically observed that "[Poletayeva's]

³ Poletayeva's first assignment of error suggests that she takes issue with the trial court's order substituting New Penn as the defendant and counterclaim plaintiff, and dismissing SLS. We decline to consider this issue, for which Poletayeva provided no argument. Holland v. City of Tacoma, 90 Wn. App. 533, 538, 954 P.2d 290 (1998) ("Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.") (citing State v. Johnson, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992)). In any event, as discussed herein, New Penn demonstrated that it was the holder of the note and entitled to foreclose.

declaration is interesting, but it has nothing to refute anything that is before the Court." Report of Proceedings (RP) (August 4, 2017) at 22. The trial court also observed that Poletayeva's declaration "cites to no law." RP (August 4, 2017) at 22. These statements make it apparent that despite its being untimely filed, Poletayeva's declaration was considered by the trial court in ruling on summary judgment.

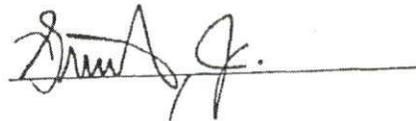
Poletayeva next argues that the trial court failed to take into account the facts that she presented—namely that Poletayeva's default was caused by Countrywide and its successor, Bank of America, when they notified her after the loan modification that her interest rate was still 12.25 percent. But Poletayeva's assertions do not raise any issue of material fact on which the instant litigation—regarding New Penn's right to foreclose—depends. Specifically, Poletayeva has brought forth no specific facts to rebut New Penn's assertions that it is the holder of the note and that Poletayeva defaulted thereunder. Indeed, Poletayeva acknowledges in her briefing that a default occurred. Finally, Poletayeva cites no authority for her apparent assertion that New Penn is not entitled to foreclose where an undisputed default exists under the terms of the note, but the borrower alleges that the default was caused by the acts of a nonparty. See Marin v. King County, 194 Wn. App. 795, 819-20, 378 P.3d 203 (absent supporting argument and citations to authority, an argument is deemed waived), review denied, 186 Wn.2d 1028 (2016). Accordingly, summary judgment was proper.

New Penn's Request for Costs

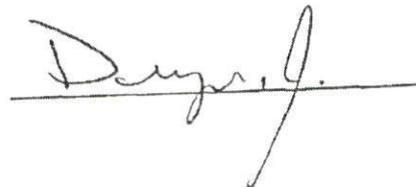
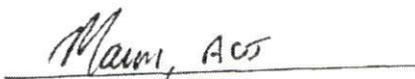
New Penn requests costs on appeal. New Penn's request for costs should be directed to the commissioner or court clerk pursuant to RAP 14.2, which provides: "A commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review."

As a final matter, this court is in receipt of a letter from Poletayeva dated October 17, 2018, in which Poletayeva requests that this court "deny the [respondent] the grant of attorney's fees, since it will be an unbearable financial burden."⁴ But New Penn did not request attorney fees on appeal, and none are awarded (other than statutory attorney fees that the clerk or commissioner may award as costs under RAP 14.3(a)).⁵ Accordingly, we need not reach the merits of Poletayeva's request.

Affirmed.



WE CONCUR:



⁴ The letter was served on New Penn.

⁵ Cf. Stiles v. Kearney, 168 Wn. App. 250, 267, 277 P.3d 9 (2012) (party requesting fees on appeal must provide argument and citation to authority to advise the court of the appropriate grounds for an award of attorney fees).